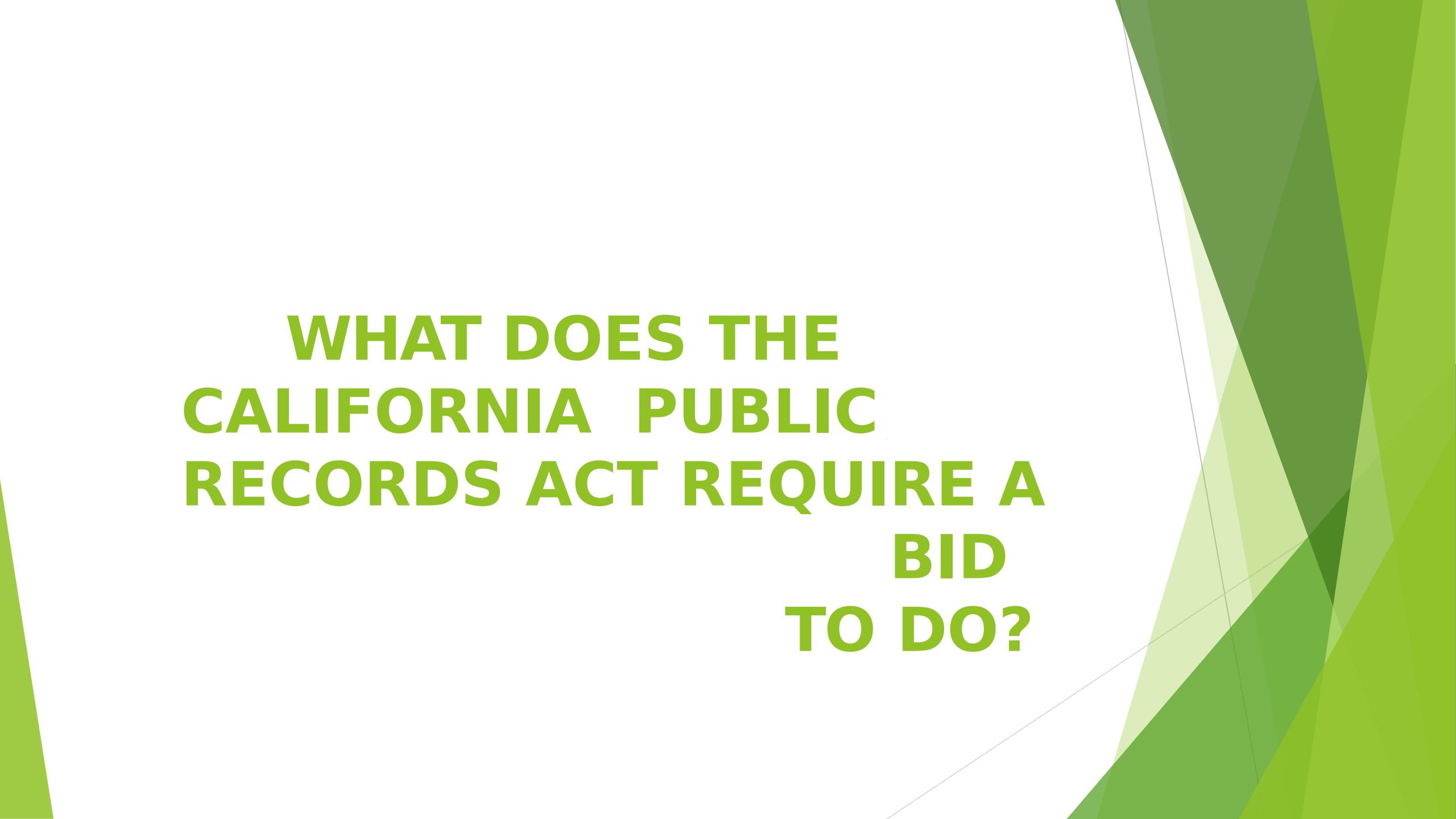


The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic visual effect.

THE CALIFORNIA PUBLIC RECORDS ACT

PRACTICAL ADVICE FOR
BUSINESS
IMPROVEMENT
DISTRICTS

**A BUSINESS
IMPROVEMENT DISTRICT IS
A “PUBLIC AGENCY” AND
THEREFORE, SUBJECT TO
THE CALIFORNIA PUBLIC
RECORDS
ACT.**

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WHAT DOES THE CALIFORNIA PUBLIC RECORDS ACT REQUIRE A BID TO DO?

**A BID must produce all
“records” pertaining to the
BID’S business upon request
by a member of the public.**

“Records” are documents, emails, calendars, texts, blog entries, etc., pertaining to BID business, within the possession, custody, or control of the BID.

**A REQUEST FOR PUBLIC
RECORDS DOES NOT NEED TO
BE MADE IN WRITING, OR ON A
PARTICULAR FORM, OR TO A
PARTICULAR PERSON.**

Let all employees and Board members know that if they receive a request for records, even if verbal, they are to notify a designated person who tracks CPRA requests!

**THE BID HAS AN
AFFIRMATIVE OBLIGATION
TO ASSIST THE PUBLIC IN
REASONABLY DESCRIBING
AN IDENTIFIABLE RECORD.**

A request must reasonable describe an identifiable record.

Technically it must be “focused and “specific” and clear enough for the BID to know what is being requested.

But if it is not, the BID is required to assist the public in

To accomplish this, the BID can inquire about the purpose (although the purpose need not be disclosed) and must describe the information technology and physical location where the records are kept.

**WHEN CAN A BID
WITHHOLD**

**RECORD
S?**

**There are exemptions
set forth in the CPRA
which the BID can rely
on to withhold certain
records.**

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THE MOST COMMON EXEMPTIONS FOR A BID TO RELY ON IN WITHHOLDING RECORDS:

Personal contact information

- **Home address, private telephone number, private email address, birth dates**
- **Be cautious of business address, business telephone number, business email address**
- **Never a government email, never a BID email address**

Right to privacy

- **Personal information in emails, e.g., birthdays, sick family members, children**

Preliminary drafts, notes, or interagency or intra-agency memoranda informally retained in the course of ordinary business

- It is not kept to document or memorialize the day to day transaction of the BID's business

- It is in a temporary step in the process of preparing a final document

- Disclosure would expose the BID's decision making process, and

Personnel records

- **Performance evaluations**
- **W-2**
- **Complaints and investigations— while ongoing investigation exempt, but “where the charges are found true and discipline is imposed” arguably not exempt.**

**Medical information
regarding employee (for
example, if the BID is a
healthcare provider) or
public served**

Attorney client communications

- **Your attorneys'
bills/retainer agreement
(?)**
 - **Check with your
attorney!**

Litigation records to which the BID is a party

- Only as long as the litigation is ongoing
- Records created by an agency for purposes of defending the litigation is not discoverable.

Deliberative Process

“The key question in every case is whether disclosure of the materials would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency’s ability to perform its functions.”

**Catchall—The public benefit
in non- disclosure outweighs
the public interest in
disclosure.**

**PRODUCING A RECORD
WAIVES THE EXEMPTION
TO PRODUCTION OF THAT
RECORD GOING FORWARD.**

REDACTING RECORDS WHERE EXEMPT MATERIAL CAN BE

**“REASONABLY
SEGREGATED.”**

The BID cannot simply refuse to disclose a document because it contains exempt material.

The BID

must redact if it can “reasonably segregate” the exempt material from the non-exempt material. If exempt material is “inextricably

PROCEDURAL PROCESS

**RECORDS MUST BE MADE
AVAILABLE
“PROMPTLY,” BIT IF NOT
REASONABLY POSSIBLE, A
RESPONSE MUST BE DAY
PROVIDED WITHIN 10 S.**

**A request received after
business hours or on a
weekend or holiday is
considered received the next
business day. If the tenth day
for a response falls on a
weekend or holiday, then the**

**DO NOT CONFUSE THE
DATE TO PRODUCE THE
RECORDS WITH THE DATE
TO RESPOND. THE RECORDS
NEED TO BE PRODUCED
“PROMPTLY,” NO SPECIFIC BUT
OTHERWISE DATE.**

The law requires that production be made in a “reasonable” amount of time, based upon the volume of the records requested and the

**IF NO RECORDS ARE
NOT PRODUCED BEFORE,
YOU MUST RESPOND
WITHIN 10 DAYS, WITH
ONE OF FOUR POTENTIAL
RESPONSES:**

Example: The BID is in receipt of your CPRA Request dated . Your request does not seek disclosable records within the meaning of the CPRA. If you need assistance in formulating a request for records that falls within the CPRA, please contact the BID and we will be happy to assist you.

Example: The BID is in receipt of your CPRA Request dated . Your request seeks disclosable records under the CPRA. You may review the records you seek in the format maintained by the BID during normal business hours on a mutually available date and time, at which time you can determine which records if any you would like copies of. Alternatively, the BID can directly make available to you hard-copies of records, and copies of electronic records in their native format on a zip drive. The cost of copies is per page, and the cost of a zip drive is . The cost of mailing will be

Example: The BID is in receipt of your CPRA Request dated. I have determined [or Mary Jones, the Executive Director, has determined] that your request seeks records exempt from disclosure under the CPRA, specifically, exempt from disclosure as constituting

_. Where exempt material is readily segregable, the BID will redact exempt material.

You may review the records you seek in the format maintained by the BID during normal business hours on a mutually available date and time, at which time you can determine which records if any you would like copies of. Alternatively, the BID can directly make available to you hard-copies of records, and copies of electronic records in their native format on a zip drive. The cost of copies is per page, and the

**Example: The BID is
in receipt of your CPRA
Request dated . The BID
will require an additional 14
calendar days to respond to
your request because [choose
from the following]:**

**(1) the BID needs to search
for and collect the
requested records from
facilities separate from the**

(2) the BID needs to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request. Identification and collection of potentially responsive records are only some of the steps involved in responding to requests. The collected records must be reviewed to ensure that they are in fact responsive to the request and to assess whether they are subject to redaction to protect the privacy rights of others and consistent with applicable legal privileges & exemptions. Each of the steps in the process takes time;

(3)the BID needs to consult with another agency having a substantial interest in the request;

(4)the BID will need to compile data, write programming language or a computer program, or construct a computer report to extract data.

**Never say it is because of the
press of business, nor that the
responsible employee is on
vacation or unavailable.**

**This is not a request for an
extension! This is notice that
the BID is extending the time.**

**BY THE END OF THE
ADDITIONAL 14 DAY
EXTENSION, THE BID MUST
NOTIFY THAT THERE ARE
RECORDS (IF ANY) TO BE
DISCLOSED, AND ANY
EXEMPTIONS CLAIMED.**

**This time there are only two
potential responses:**

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per page, and the cost of a zip drive is . The cost of mailing will be determined once it is determined the manner in which you would like to receive the records.

Example: The BID is in receipt of your CPRA Request dated. I have determined [or Mary Jones, the Executive Director, has determined] that your request seeks records exempt from disclosure under the CPRA, specifically, exempt from disclosure as constituting

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THE JUDICIAL PROCESS TO REVIEW AN ALLEGED VIOLATION OF THE

- **Petition for Writ of Mandamus—a lawsuit for injunctive or declaratory relief**
- **Request the Court to compel compliance with the CPRA, either by compelling a response, or production of documents withheld under an exemption.**
- **The burden to justify any exemption is on the BID.**
- **No criminal penalties, and no personal exposure.**
- **There is an award of attorneys' fees and costs to the prevailing plaintiff. The agency only**

SPECIFIC EXAMPLES

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Emails

Bank

statements/checks

BID Security

Reports

Received: from EXCH01.bglawyers.local (10.0.0.13) by EXCH01.bglawyers.local (10.0.0.13) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384) id 15.1.845.34 via Mailbox Transport; Mon, 9 Jul 2018 15:27:52 -0700

Received: from EXCH01.bglawyers.local (10.0.0.13) by EXCH01.bglawyers.local (10.0.0.13) with Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384) id 15.1.845.34; Mon, 9 Jul 2018 15:27:52 -0700

Received: from EXCH01.bglawyers.local ([fe80::74af:61ce:6f90:cb8a]) by EXCH01.bglawyers.local ([fe80::74af:61ce:6f90:cb8a%2]) with mapi id 15.01.0845.039; Mon, 9 Jul 2018 15:27:51 -0700

Content-Type: application/ms-tnef; name="winmail.dat"

Content-Transfer-Encoding: binary

From: Carol Humiston <chumiston@bglawyers.com>

To: German Dixon <gdixon@bglawyers.com>

Subject: RE: Metadata

Thread-Topic: Metadata

Thread-Index: AdQX06p0/AcoKDVRQ3KESAGRig2FegAAE8fA

Date: Mon, 9 Jul 2018 15:27:51 -0700

Message-ID: <0d6bc0832e044dc6a5a484be4615ba5c@bglawyers.com>

References: <01282e146a444014b0a50f2220e02554@bglawyers.com>

In-Reply-To: <01282e146a444014b0a50f2220e02554@bglawyers.com>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach: yes

X-MS-Exchange-Organization-SCL: -1

X-MS-TNEF-Correlator: <0d6bc0832e044dc6a5a484be4615ba5c@bglawyers.com>

MIME-Version: 1.0

X-MS-Exchange-Organization-MessageDirectionality: Originating

X-MS-Exchange-Organization-AuthSource: EXCH01.bglawyers.local

X-MS-Exchange-Organization-AuthAs: Internal

X-MS-Exchange-Organization-AuthMechanism: 04

X-Originating-IP: [10.0.0.1]

X-MS-Exchange-Organization-Network-Message-Id: 74237d34-5bba-4491-c67b-08d5e5eb3578

Return-Path: chumiston@bglawyers.com

X-MS-Exchange-Transport-EndToEndLatency: 00:00:00.5201250

CONCLUDING ADVICE

Meet the 10 day and 14 day deadlines, and 90% of litigation can be avoided.

Suggested Reference: The People's Business: A Guide to the California Public Records Act, by the California League